

**MARLENE J. SMITH**  
Claimant

**RESOURCE CENTER (RCIL)**  
Respondent

**LIBERTY MUTUAL INSURANCE COMPANY**  
Insurance Carrier

## ORDER

Claimant appeals the June 12, 2003 preliminary hearing Order of Administrative Law Judge Brad E. Avery. Claimant was denied benefits after the Administrative Law Judge determined that while claimant had suffered an accident, the accident did not arise out of and in the course of her employment.

Did claimant suffer accidental injury arising out of and in the course of her employment with respondent on the date alleged?

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant, a home health care nurse, began working for respondent in December of 2001. Respondent administered to home- and community-based Medicaid programs for the physically disabled, acting as the payroll agent. Claimant signed a contract to work for a client named Darrel Brown, with the contract beginning August 1, 2002. Claimant's responsibilities required she drive directly to the home of Mr. Brown, where she spent the entire work day providing services for Mr. Brown. Claimant was not compensated for the mileage nor for the travel between her home and Mr. Brown's apartment.

When claimant arrived at the apartment on the morning of November 15, 2002, she parked in a parking lot which was shared by the apartment and a local Pizza Hut. Claimant exited her car and, as she was walking across the grass, stepped on the corner of a manhole cover and fell in, suffering injuries to her right foot, toes and ankle.

Respondent contends that the injury did not occur out of and in the course of claimant's employment and, therefore, compensation should be denied. Claimant argues that she was traveling to her job and that travel was a necessary and integral part of her job, therefore making the injury compensable.

K.S.A. 2002 Supp. 44-508(f) states:

The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer.

The rule in Kansas when dealing with travel is that when traveling is an integral part, inherent in nature, or necessary to the employment, the "going and coming" rule does not apply.<sup>1</sup>

It is not contended that the parking lot or the grass where claimant was injured was the premises of respondent. It was, instead, a portion of the apartment complex where claimant's client, Mr. Brown, lived, with the parking lot being shared by the local Pizza Hut.

Claimant does, however, argue that because claimant must travel from her home to the apartment complex, that travel is an integral and necessary part of her employment. In *Messenger*, cited above, the claimant was an oil driller in a situation where it was common practice that workers live great distances from their work sites. Workers were reimbursed for their mileage and required to travel long distances between jobs. That is not the case in this instance, as claimant worked at only one location, that being Mr. Brown's apartment. That, in effect, was claimant's job site.

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<sup>1</sup> *Messenger v. Sage Drilling Co.*, 9 Kan. App. 2d 435, 680 P.2d 556, rev. denied 235 Kan. 1042 (1984).

Claimant also cites the Appeals Board's opinion in *Heidel*.<sup>2</sup> *Heidel* involved a home health aide who was required to travel from home to home, providing in-home assistance to various clients. She was on her way to a client's home when she was injured in an automobile accident. The Board affirmed the award of benefits in that decision after determining that travel was an integral part of her employment and that claimant traveling to the first home was no different than claimant traveling to any of several homes she was required to visit. Here, however, claimant did not travel from home to home, but instead worked at a set location. Therefore, claimant's travel to the Brown apartment was no different than any other worker's travel to his or her normal work location. As such, the Board finds that travel was not an integral and necessary part of claimant's job. Therefore, an injury occurring as she walked across the grass between the parking lot and the apartment complex did not arise out of and in the course of her employment with respondent. The Administrative Law Judge's denial of benefits in this matter is affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated June 12, 2003, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2003.

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BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant  
Tracy Vetter, Attorney for Respondent  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Director

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<sup>2</sup> *Heidel v. Advantage Home Care, Inc.*, No. 222,618, 1997 WL 570446 (Kan. WCAB July 30, 1997).